

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

VLADIK BYKOV, Pro Se,

Plaintiff,

vs.

EACCELERATION CORPORATION, d/b/a
WWW.EACCELERATION.COM; d/b/a
WWW.STOP-SIGN.COM,

Defendant.

No. CV05-5251(RBL)

**DECLARATION OF MARIE R.
WESTERMEIER IN SUPPORT OF
DEFENDANT'S SECOND MOTION
FOR PROTECTIVE ORDER**

I, Marie Westermeier, being over the age of eighteen (18) years and competent to testify to the matters herein, declare and state as follows:

1. I am one of the attorneys representing Defendant, EACCELERATION CORPORATION in this matter.

2. Through initial disclosures and in response to discovery requests, defendant has produced to plaintiff his personnel file and all emails that were sent to, from or about him. Defendant also produced eAcceleration documents such as the employee handbook, tests and sample training materials that applied to him, as well as corporate documents such as Articles of Incorporation and SEC filings. In addition to providing documents, defendant has provided a

1 narrative answer to plaintiff's first set of interrogatories that describes plaintiff's hiring, training,
2 testing, his course of employment, and his performance leading up to his termination.

3 3. In Plaintiff's First Notice of Request for Production of Documents to Defendant,
4 (No. 3), plaintiff requested all documents related to the employment test administered by
5 eAcceleration. A true and correct copy of those requests are attached as Exhibit 1. In response,
6 Defendant produced copies of the employment tests.

7 4. In Plaintiff's 1st Notice of Oral Deposition and 2d Notice for Production of
8 Documents to Defendant, plaintiff requested a copy of the "general intelligence exam" that
9 defendant administered to plaintiff. A true and correct copy of this request is attached as Exhibit
10 2.

11 5. On January 27, 2006, plaintiff propounded another set of requests for production
12 seeking documents related to the standardized written test that defendant administers to all
13 applicants for technical support positions, and which plaintiff took. A true and correct copy of
14 Plaintiff's 3rd Notice of Request for Production of Documents to Defendant is attached as Exhibit
15 3.

16 6. By letter, defendant objected to plaintiff's discovery requests related to the
17 employment test. A true and correct copy of the letter is attached as Exhibit 4. Plaintiff
18 responded to the objection with a letter stating that the requests were related to his 7th Cause of
19 Action. A true and correct copy of plaintiff's letter is attached hereto as Exhibit 5.

20 7. On February 3, plaintiff propounded yet another set of discovery requests
21 requesting information about the written employment test. A true and correct copy of Plaintiff's
22 2d Interrogatory Request is attached as Exhibit 6. In it, plaintiff asks defendant to describe how
23 each test question relates to "what plaintiff was doing at eAcceleration," (No. 2). It also asks
24 defendant to identify the business necessity of the examination (No. 4). Interrogatory No. 4
seeks extensive personnel information on all employees and interns who have ever worked at
eAcceleration, and all applicants to eAcceleration.

1 8. On January 9, 2006, this court entered a protective order that prohibited plaintiff
2 from having direct contact with managers officers and directors of eAcceleration, as well as any
3 other employees who asked not to be contacted by him. The order provided that all depositions
4 in the case were to take place at the office of Bennett Bigelow & Leedom. The order also struck
5 plaintiff's first 10 sets of Requests for Admission. A true and correct copy of the order is
6 attached as Exhibit 7.

7 9. After the protective order was entered, plaintiff telephoned me and requested to
8 conduct a deposition in Redmond, Washington. I asked the plaintiff why he wanted to hold the
9 deposition in Redmond, and he told me that it would be more convenient for him. I told the
10 plaintiff that Redmond was not convenient for the eAcceleration employees, and that I would not
11 agree to conduct any depositions of eAcceleration employees in Redmond.

12 10. On March 1, 2006, after my telephone conversation with the plaintiff regarding
13 the location for depositions, plaintiff issued a notice of deposition for Nathan Inabinett. The
14 notice stated that the deposition was to take place at the public library in Redmond. A true and
15 correct copy of the deposition notice is attached as Exhibit 8.

16 11. Upon receiving the deposition notice, I wrote a letter to the plaintiff in which I
17 informed him that Mr. Inabinett could be available for deposition on March 13 in my office. I
18 also provided available dates for other witnesses whose depositions the plaintiff requested. A
19 true and correct copy of my letter to the plaintiff is attached as Exhibit 9. The plaintiff did not
20 respond to my letter in any way.

21 12. On March 8, I wrote a second letter to the plaintiff asking him to confirm that the
22 depositions would go forward in my office as per my letter of March 3. I asked him to confirm
23 the depositions by close of business on Thursday, March 9. A true and correct copy of my
24 March 3 letter to plaintiff is attached hereto as Exhibit 10. Plaintiff did not contact me in any
way to either confirm or strike the deposition. On Friday, March 10, I informed my client that

1 the plaintiff had not confirmed the deposition and that the deposition would not go forward on
2 March 13.

3 13. On March 13, plaintiff neither appeared in my office nor otherwise contacted me.
4 On March 15, I received a letter from the plaintiff informing me that he waited at the Redmond
5 library for Mr. Inabinett to appear for his deposition. The plaintiff asked me to reimburse him
6 for his time spent at the library and for the expenses associated with having a notary public
7 appear. A true and correct copy of the letter is attached as Exhibit 11.

8 14. After the protective order was entered, plaintiff sent a letter to the president of
9 eAcceleration, Clint Ballard, instructing him about preserving documents for purposes of
10 discovery. A true and correct copy of the letter is attached hereto as Exhibit 12. Plaintiff also
11 sent Mr. Ballard a copy of the deposition notice of Nathan Inabinett. A true and correct copy of
12 the deposition notice and postmarked envelope from plaintiff to eAcceleration is attached as
13 Exhibit 13.

14 15. Since the inception of this case, plaintiff has propounded 3 sets of interrogatories,
15 7 sets of requests for production, two notices of intent to inspect property, and 11 sets of requests
16 for admission. After the protective order was entered in January, plaintiff propounded five sets
17 of requests for production, one set of requests for admission, 2 sets of interrogatories, and 1
18 notice of inspection of property. In his requests for production, plaintiff requests that defendant
19 produce documents "as they are located in their usual place of keeping at eAcceleration
20 Corporation." Defendant has produced hard copies of the documents in response to the requests
21 for production, but defendant has not allowed plaintiff to enter the premises of eAcceleration to
22 inspect documents or hard drives of its computers. Plaintiff continues to demand to inspect
23 original hard drives and documents as set forth in his letters dated January 5 and March 14, 2006.
24 True and correct copies of each letter are attached hereto as Exhibit 14.

16. Plaintiff continues to demand access to eAcceleration headquarters to videotape
the premises without explaining how such inspection is designed to lead to the discovery of

1 admissible evidence. eAcceleration has emphatically communicated to me that it does not want
2 to have the plaintiff on its property for any reason. A true and correct copy of plaintiff's letter
3 demanding access to videotape the headquarters is attached hereto as Exhibit 15.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct to the best of my knowledge and belief.

6 Executed at Seattle, Washington, this 20th day of March, 2006.

7 
8 _____
9 MARIE R. WESTERMEIER
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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, pro se,

Plaintiff,

vs.

EACCELERATION CORP.,
d/b/a WWW.EACCELERATION.COM,
d/b/a WWW.STOP-SIGN.COM,

Defendant.

CASE NO. C05-5251 RBL

DEFENDANT'S RESPONSE TO
PLAINTIFF'S 1st NOTICE OF REQUEST
FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT

In accordance with Rule 34 of the Federal Rules of Civil Procedure, the Plaintiff, Vladik Bykov, hereby requests that the Defendant, eAcceleration Corporation, produce the documents as they are located in their usual place of keeping at eAcceleration Corporation, set forth in the numbered paragraphs that follow, at the offices of eAcceleration Corporation located at 1050 NE Hostmark St. Ste. 100B, Poulsbo, WA 98370 on the date of January 2nd, 2006 at 9 AM, and continuing for as many hours or days as needed, until copies of all requested documents are made. Please make arrangements for someone to be present and available who will provide plaintiff with any necessary specialized access to any documents requested in this Plaintiff's 2nd Notice of Request for Production of Documents.

As used herein, the term "document" shall include all writings, notes, drafts, outlines, recordings, and files, regardless of storage media; they include, but are not limited to, writings contained on paper, recordable tape, celluloid, disks, hard drives, electronic mail servers, or any

1 other digitally stored media. The term "document" shall also include the full range of writings
2 described in Rule 1001 of the Federal Rules of Evidence.

3 GENERAL OBJECTIONS

4 Defendant incorporates its general objections as made below in response to each of
5 Plaintiff's discovery requests where required.

6 1. Defendant objects to these discovery requests to the extent they seek to impose
7 obligations on Defendant beyond those of Civil Rules 26, 33 and 34.

8 2. Defendant objects to providing any information in response to Plaintiff's
9 discovery requests that is protected by the attorney-client privilege, attorney work product
10 doctrine, or any other applicable privilege, protection or restriction.

11 3. Defendant objects to these discovery requests to the extent they request
12 information regarding consulting experts which is outside the scope of Civil Rule 26.

13 4. Defendant objects to Plaintiff's discovery requests to the extent they are overly
14 broad in time or scope, vague, ambiguous, oppressive, unduly burdensome, harassing, not
15 reasonably calculated to lead to the discovery of admissible evidence, or would require
16 unreasonable investigation.

17 5. Defendant objects to Plaintiff's discovery requests to the extent the information
18 sought is a matter of public record and/or equally accessible and available to Plaintiff from
19 examination of public records and/or Plaintiff's own files.

20 6. Defendant objects to all discovery requests to the extent they seek information
21 beyond Defendant's possession, custody or control.

22 7. Defendant objects to making available for inspection and/or providing copies of
23 any documents which are confidential in nature and/or any confidential documents which relate
24 to persons not covered by any Court-issued Protective Order.

25
26 Subject to these objections and without waiver of these objections, Defendant answers
27 and/or responds as follows:
28

1 1. All documents in your possession, custody, control, or under your control,
2 written or created after the date of April 26th, 2004 that pertain directly or indirectly to the
3 employment of the plaintiff, Vladik Bykov, at eAcceleration Corporation, which is the subject
4 of this litigation.

5 **Response:**

6 Defendant objects to this request as vague and overbroad and not calculated to lead to
7 the discovery of admissible evidence. Defendant also objects to the extent that the request
8 seeks documents that are protected by the attorney-client privilege. Without waiving
9 objection, see documents previously produced as part of Defendant's initial disclosures, EAC
10 000001-000069, as well as the documents attached hereto. Other non-privileged documents
11 that are responsive to this request will be produced as discovery proceeds.

12
13 2. All employee personnel records and documents containing all employee
14 information including, but not limited to name, address, telephone number, salary, number of
15 hours worked, current position, positions held, promotions, demotions, qualifications,
16 examination results and any and all internal complaints filed against eAcceleration Corporation,
17 as they are kept in the usual and normal course of business, for all current employees and
18 interns and all previous employees and interns beginning from the initial date of incorporation
19 of eAcceleration Corporation.

20 **Response:**

21 Defendant objects to this request as vague, overbroad, unduly burdensome and not
22 calculated to lead to the discovery of admissible evidence. Defendant also objects to the extent
23 that the request seeks documents that are protected by the attorney-client privilege. Personnel
24 files of employees at eAcceleration contain private personal and confidential information that
25 will not be released in the absence of a showing of need as determined by the court, and only
26 pursuant to an appropriate protective order.

3. All documents in your possession, custody, control, or under your control, written or created after the date of incorporation of eAcceleration Corporation that pertain directly or indirectly to hiring requirements, employment tests or examinations, qualification standards, selection criteria, standards and policies, interview procedures or methods of administration that, including, but not limited to, have been used or will, influence, direct, guide, establish or determine the employment paths, positions or opportunities of employees or interns at eAcceleration Corporation. Include all examinations or tests ever administered to any and all employees and interns at eAcceleration Corporation.

Response:

Defendant objects to this request as vague, overbroad and ambiguous and not calculated to lead to the discovery of admissible evidence. Defendant also objects to the extent that the request seeks documents that are protected by the attorney-client privilege. Without waiving objection, see documents previously produced as part of Defendant's initial disclosures, as well as documents attached as EAC 000582-000937. See also documents EAC 000961- 000977. Additional, non-privileged documents responsive to this request and specific to the plaintiff will be produced.

4. All documents in your possession, custody, control, or under your control, written or created after the date of incorporation of eAcceleration Corporation that pertain directly or indirectly to employee training, including, but not limited to employee training requirements, training schedules, training content and material. Include all training assignments, tests or examinations administered to any and all employees and interns during any and all training courses, periods or classes at eAcceleration from the initial date of incorporation of eAcceleration Corporation.

Response:

Defendant objects to this request as vague, overbroad and ambiguous and not calculated to lead to the discovery of admissible evidence. Defendant also objects to the extent that the request seeks documents that are protected by the attorney-client privilege. Without waiving

1 objection, see documents that were used to train new employees at or around the time that the
2 plaintiff was hired at eAcceleration, EAC 000800-000937.

3
4 5. Copies of all EEO-1 reports and all documents in your possession, custody,
5 control, or under your control, written or created after the date of incorporation of
6 eAcceleration Corporation that pertain directly or indirectly to the EEO-1 reports and
7 preparation.

8 **Response:**

9 Defendant objects to this request as not calculated to lead to the discovery of admissible
10 evidence. The information contained in Defendant's EEO-1 report does not have any bearing
11 on any of plaintiff's claims in this lawsuit.

12
13 6. Full and complete access to eAcceleration Corporation's internal website
14 documents that are used or referenced by Technical Support Technicians. Provide access to the
15 actual web pages and data that are used or referenced by Technical Support Technicians so that
16 a full and complete copy can be made of all web pages and data that are used or referenced by
17 Technical Support Technicians.

18 **Response:**

19 Defendant objects to this request as vague, overbroad, and not calculated to lead to the
20 discovery of admissible evidence. Information from Defendant's internal website for
21 Technical Support Technicians is highly confidential, and it contains proprietary information
22 that will not be disclosed. Without waiving objections, plaintiff has been provided certain
23 documents from the website that contain standard answers to technical support questions.

24
25 7. All documents in your possession, custody, or control or under your control,
26 written or created after the date of incorporation of eAcceleration Corporation that pertain
27 directly or indirectly to company policy and procedure regarding the employment and
28 treatment of employees at eAcceleration Corporation, including, but not limited to specific

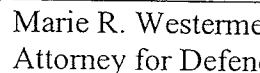
1 employee information that will be recorded, maintained, and destroyed; procedures for
2 employee transfer, promotion, demotion, rehabilitation, and termination; and any other
3 documentary information that shows how employees are to be treated, communicated with and
4 managed.

5 **Response:**

6 Defendant objects to this request as vague and ambiguous and not calculated to lead to
7 the discovery of admissible evidence. Without waiving objection, see documents previously
8 provided as part of Defendant's initial disclosures, EAC 000001-000069.

9
10 DATED this 3rd day of January, 2006.

11
12 BENNETT BIGELOW & LEEDOM, P.S.

13
14 
15 Marie R. Westermeier, WSBA# 18623
16 Attorney for Defendant, eAcceleration Corporation
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, Pro Se,

Plaintiff,

vs.

EACCELERATION CORPORATION, d/b/a
WWW.EACCELERATION.COM; d/b/a
WWW.STOP-SIGN.COM,

Defendant.

NO. CV05-5251(RBL)

CERTIFICATE OF MAILING

I, Jeni Bonanno certify under penalty under the laws of the State of Washington:

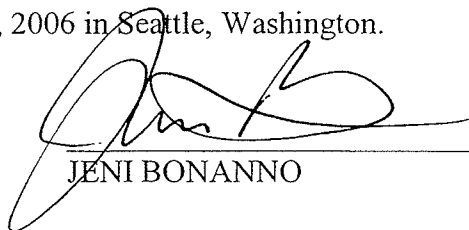
1. I am a resident of the United States, and I am now and was at all times material hereto over the age of 18 years. I am not a party to the above-entitled action and am competent to be a witness herein.

2. On January 3, 2006, I caused to be served by U.S. Mail a true and correct copy of **DEFENDANT'S RESPONSE TO PLAINTIFF'S 1ST NOTICE OF PRODUCTION OF DOCUMENTS TO DEFENDANT** and this **CERTIFICATE OF MAILING** to:

VLADIK BYKOV, Plaintiff Pro Se

7435 159 Place NE, #H347
Redmond, WA 98052

SIGNED this 3rd day of January, 2006 in Seattle, Washington.


JENI BONANNO

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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, pro se,

Plaintiff,

vs.

EACCELERATION CORP.,
d/b/a WWW.EACCELERATION.COM,
d/b/a WWW.STOP-SIGN.COM

Defendant

CASE NO. C05-5251 RBL

PLAINTIFF'S 1st NOTICE OF ORAL
DEPOSITION AND 2nd NOTICE FOR
PRODUCTIONS OF DOCUMENTS TO
DEFENDANT and DEFENDANT'S
RESPONSES THERETO

Noticing Party: Plaintiff, Vladik Bykov

Responding Party: Eacceleration Corporation
1050 NE Hostmark St.100B
Poulsbo, WA 98370

COMBINED DISCOVERY REQUEST

Notice of Deposition

And

2nd Notice for Production of Documents

PLEASE TAKE NOTICE that in accordance with Rule 30 of the Federal Rules of Civil Procedure, the Plaintiff, Vladik Bykov, intends to take the oral deposition of Jennifer K.

PLAINTIFF'S 2nd NOTICE OF REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT and DEFENDANT'S
RESPONSES THERETO – Page 1

LAW OFFICES
BENNETT BIGELOW & LEEDOM, P.S.
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98101
T: (206) 622-5511 F: (206) 622-8986

EXHIBIT 2

Engstrom, a managing agent of the Responding Party, Eacceleration Corporation, and who currently abides at 6519 Lake Dr. in the City of Bremerton and State of Washington. The deposition will take place at the apartment of Plaintiff, Vladik Bykov, located at 7435 159th PL NE, Apartment H347, in the City of Redmond and State of Washington, on Friday on the date of January 6th, 2006, at 10 o'clock AM before a Notary Public, authorized to administer oath. The deposition will start at 10 AM and will continue for up to seven hours, not including a 2 hour break for lunch and other break periods as necessary. You are invited to attend and cross-examine.

GENERAL OBJECTIONS

Defendant incorporates its general objections as made below in response to each of Plaintiff's discovery requests where required.

1. Defendant objects to these discovery requests to the extent they seek to impose obligations on Defendant beyond those of Civil Rules 26, 33 and 34.

2. Defendant objects to providing any information in response to Plaintiff's discovery requests that is protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege, protection or restriction.

3. Defendant objects to these discovery requests to the extent they request information regarding consulting experts which is outside the scope of Civil Rule 26.

4. Defendant objects to Plaintiff's discovery requests to the extent they are overly broad in time or scope, vague, ambiguous, oppressive, unduly burdensome, harassing, not reasonably calculated to lead to the discovery of admissible evidence, or would require unreasonable investigation.

5. Defendant objects to Plaintiff's discovery requests to the extent the information sought is a matter of public record and/or equally accessible and available to Plaintiff from examination of public records and/or Plaintiff's own files.

1 6. Defendant objects to all discovery requests to the extent they seek information
2 beyond Defendant's possession, custody or control.

3 7. Defendant objects to making available for inspection and/or providing copies of
4 any documents which are confidential in nature and/or any confidential documents which relate
5 to persons not covered by any Court-issued Protective Order.

6 Subject to these objections and without waiver of these objections, Defendant answers
7 and/or responds as follows:

8 1. A copy of the general intelligence exam that Jennifer K. Engstrom did, on or
9 about May 27th, 2004, request that the Plaintiff, Vladik Bykov, take while Plaintiff was under
10 Jennifer K. Engstrom's managerial control during Plaintiff's training period at Eacceleration
11 Corporation.

12 **Response:**

13 Defendant objects to this request as vague and ambiguous with respect to the term
14 "general intelligence exam." Defendant does not administer a general intelligence exam.
15 Defendant further objects to this request as cumulative of RFP No. 3 in Plaintiff's 1st Notice of
16 Request for Production of Documents to Defendant. Without waiving objection, see documents
17 previously produced in response thereto.

18
19 2. Full and complete copies of all assignments in the form of documents that
20 Jennifer K. Engstrom did assign to Plaintiff, Vladik Bykov, while under Jennifer K. Engstrom's
21 managerial control during Plaintiff's training period at Eacceleration Corporation.

22 **Response:**

23 Defendant objects to this request as vague and ambiguous and to the extent that it
24 assumes that all assignments by Jennifer Engstrom were contained in written documents.
25 Defendant further objects that this request is cumulative of RFP No. 4 in Plaintiff's 1st Notice of
26 Request for Production of Documents to Defendant. Without waiving objection, see documents
27 previously produced at EAC000582-000937.

3. Full and complete copies of all training outlines and training materials that were provided to Plaintiff, Vladik Bykov, while he was under Jennifer K. Engstrom's managerial control during Plaintiff's training period at Eacceleration Corporation.

Response:

Defendant objects to this request as vague and ambiguous. Without waiving objection, see documents previously produced at EAC 000582-000937.

4. Full and complete copies of all training plans and documents that were used by Jennifer K. Engstrom to train Plaintiff, Vladik Bykov, while Plaintiff was under Jennifer K. Engstrom's managerial control during Plaintiff's training period at Eacceleration Corporation.

Response:

Defendant objects to this request as vague and ambiguous as to "training plans and documents." Defendant further objects that this request is cumulative of RFP No. 4 in Plaintiff's 1st Notice of Request for Production of Documents to Defendant. Without waiving objection, see documents previously produced at EAC 000582-000937.

5. Full and complete copies of all documents showing communication between Jennifer K. Engstrom and Plaintiff, Vladik Bykov, while Plaintiff was under Jennifer K. Engstrom's managerial control during Plaintiff's training period at Eacceleration Corporation. Do not forget to include all e-mails exchanged between Jennifer K. Engstrom and Vladik Bykov.

Response:

Defendant objects to this request as overbroad and not calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that this request calls for documents that are protected by the work product or attorney-client privilege. Without waiving objection, see documents produced at EAC 000582-000937.

6. Full and complete copies of all document material that Jennifer K. Engstrom did provide to Plaintiff, Vladik Bykov, that provided Plaintiff with information regarding Plaintiff's duties and responsibilities during training and after training.

Response:

Defendant objects to this request as vague and ambiguous as to the meaning of "document material" and to the extent that the request is cumulative of RFP No. 4 in Plaintiff's 1st Notice of Request for Production of Documents to Defendant.

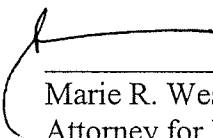
7. Full and complete copies of all, including, but not limited to, employee handbooks or any other documents that provided the Plaintiff, Vladik Bykov, with information relating to his relationship with Eacceleration Corporation and how he would expect to be treated by Eacceleration Corporation.

Response:

Defendant objects to this request as vague and ambiguous. Defendant further objects to this request is cumulative of RFPs No. 1 and 7 in Plaintiff's 1st Notice of Request for Production of Documents to Defendant. Without waiving objections, see documents produced in response thereto.

DATED this 4th day of January, 2006.

BENNETT BIGELOW & LEEDOM, P.S.


Marie R. Westermeier, WSBA# 18623
Attorney for Defendant

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PY

HONORABLE RONALD B. LEIGHTON

COPY RECEIVED
TIME _____ BY _____

JAN 27 2006

BENNETT BIGELOW
& LEEDOM

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, pro se,

Plaintiff,

vs.

EACCELERATION CORP.,
d/b/a WWW.EACCELERATION.COM,
d/b/a WWW.STOP-SIGN.COM

Defendant

CASE NO. C05-5251 RBL

PLAINTIFF'S 3rd NOTICE OF REQUEST
FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT

In accordance with Rule 34 of the Federal Rules of Civil Procedure, the Plaintiff, Vladik Bykov, hereby requests that the Defendant, Eacceleration Corporation, produce the documents as they are located in their usual place of keeping at Eacceleration Corporation, set forth in the numbered paragraphs that follow, at the offices of Eacceleration Corporation located at 1050 NE Hostmark St. Ste. 100B Poulsbo, WA 98370 on the date of February 27th, 2006 at 9 AM, and continuing for as many hours or days as needed, until copies of all requested documents are made. Please make arrangements for someone to be present and available who will provide plaintiff with any necessary specialized access to any documents requested in this Plaintiff's 3rd Notice of Request for Production of Documents.

As used herein, the term "document" shall include all writings, notes, drafts, outlines, recordings, and files, regardless of storage media; they include, but are not limited to, writings

PLAINTIFF'S 3rd NOTICE FOR PRODUCTION - 1
OF DOCUMENTS TO DEFENDANT

CASE #: CV05-5251

EXHIBIT

3

Vladik Bykov Pro Se
7435 159th PL NE H347
REDMOND, WA 98052
425-869-8379
VLADIK@USA.NET

1 contained on paper, recordable tape, celluloid, disks, hard drives, electronic mail servers, or any
2 other digitally stored media. The term "document" shall also include the full range of writings
3 described in Rule 1001 of the Federal Rules of Evidence.

4 1. All documents in your possession, custody, control, or under your control, written or
5 created that show the results of all tests or exams that Eacceleration has ever required of any
6 and all job applicants, employees or interns, starting from the date of Eacceleration's
7 incorporation.

8 2. Copies of the actual tests and examinations that Eacceleration Corporation has ever
9 required of job applicants, employees and interns, starting from the initial date of
10 Eacceleration's incorporation.

11 3. Copies of Eacceleration Corporation's articles of incorporation.

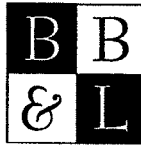
12 4. All documents in your possession, custody, control, or under your control, written or
13 created that show why the Plaintiff, Vladik Bykov, was required to take an examination on
14 May 28th, 2004.

15 5. All documents in your possession, custody, control, or under your control, written or
16 created that indicate the general purpose for the examination, as taken by Plaintiff, for which it
17 is used at Eacceleration Corporation.

18 6. All documents in your possession, custody, control, or under your control, written or
19 created that indicate when the examination, which was taken by Plaintiff, Vladik Bykov, is
20 administered to job applicants, employees or interns at Eacceleration Corporation.

21
22 DATED this 26th day of January, 2006

23
24 By: /S Vladik Bykov
25 VLADIK BYKOV, pro se
26 7435 159th PL NE H347
27 REDMOND, WA 98052
28 425-869-8379
VLADIK@USA.NET



Bennett Bigelow & Leedom, P.S.

Law Offices

Marie R. Westermeier
Attorney
mwestermeier@bblaw.com

February 17, 2006

Vladik Bykov
7435 159th Place NE, #H347
Redmond, WA 98052

Re: Bykov v. eAcceleration

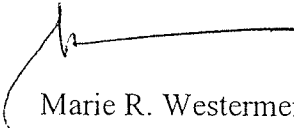
Dear Mr. Bykov:

Defendant eAcceleration objects to Plaintiff's 3rd Notice of Request for Production of Documents to Defendant and will not produce the documents that you requested related to the test. As you know, you received a passing test score. As such, the test has no bearing on your failure to accommodate claims, and information about the test is not calculated to lead to the discovery of admissible evidence. Even if it were, your requests in Nos. 1, 2 and 6 are overbroad and burdensome.

Please do not appear at the offices of eAcceleration on February 27th or on any other date to attempt to copy documents. Thank you for your cooperation in this matter.

Very truly yours,

BENNETT BIGELOW & LEEDOM, P.S.



Marie R. Westermeier

MRW:cbf

cc: Clint Ballard
John Bower
Noelle Jackson

{1330.00013/MM602823.DOC, Ver. 1}

~~COPY RECEIVED~~
~~February 18, 2006~~
TIME ~~Redmond, WA~~

FEB 22 2006

BENNETT BIGELOW
& LEEDOM

Marie R. Westermeier
Bennett Bigelow and Leedom
1700 7th Ave.
Suite 1900
Seattle, WA 98101

Re: Bykov v Eacceleration CV05-5251

To Ms. Marie R. Westermeier:

I received a letter from you today, dated February 17th, 2006, where you state that Defendant objects to Plaintiff's 3rd Notice of Request for Production of Documents to Defendant ("REQUEST") and that Defendant will not produce documents in the aforementioned REQUEST. I kindly insist that you produce the documents requested. I believe that your objection is in bad faith and your reasons for objecting to the REQUEST are illegitimate.

As you may know and the record shows, Plaintiff was required to take a standardized intelligence test on May 28th, 2004 while he was employed at Eacceleration Corporation. Indeed, Eacceleration Corporation has admitted in its answer that Plaintiff was required to take a standardized intelligence test. Coincidentally, or on purpose, this intelligence test was given to the Plaintiff just shortly after Plaintiff had asked for an accommodation for his mental impairment. Eacceleration has failed to answer why Plaintiff was required to take an intelligence test and the reasons why Eacceleration requires its job applicants and employees to take an intelligence test as a condition of employment. These questions, and therefore all related discovery, are relevant to the issue of why Plaintiff was required to take an intelligence test and more importantly, what factor the intelligence test played in Plaintiff's lack of accommodation and subsequent termination.

In the same later, dated February 17th, 2006, you state that "[I]...received a passing test score" and "...the test has no bearing on your failure to accommodate claims, and information about the test is not calculated to lead to the discovery of admissible evidence." Have you forgotten that the Plaintiff has pled multiple claims in his Complaint? I will remind you of one of the claims: Claim 7 "The Americans with Disabilities Act prohibits using employment tests that screen out or tend to screen out an individual with a disability unless the test is shown to be job-related for the position in question and is consistent with business necessity. 42 USC §12112(b)(6). Eacceleration, by forcing Plaintiff to take a standardized general intelligence test, is in violation of the Americans with Disabilities Act, 42 USC § 12,101 et seq."

If you still fail to understand the connection between the intelligence test that Plaintiff was forced to take and the necessity of discovery relating to the test, please let me know and I will try to explain further. And if you like, I can also send you a copy of my complaint if you have lost the original.

EXHIBIT **5**

I kindly request that you produce the documents requested in Plaintiff's 3rd Notice of Request for Production of Documents by replying to this letter and stating that you will produce the documents. Alternatively, if you still object to their production, I kindly request that we have a conference before the Plaintiff files a motion to compel discovery under F.R.C.P. Rule 37. I expect to receive a letter from you indicating date and time for our conference, and whether it will be telephonic or in person.

Sincerely,

A handwritten signature in cursive script that reads "Vladik Bykov". The signature is written in dark ink and is positioned above the printed name.

Vladik Bykov

COPY RECEIVED
HONORABLE RONALD B. LEIGHTON
TIME BY

FEB - 3 2006

BENNETT BIGELOW
& LEEDOM

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, pro se,

Plaintiff,

vs.

EACCELERATION CORP.,
d/b/a WWW.EACCELERATION.COM,
d/b/a WWW.STOP-SIGN.COM

Defendant

CASE NO. C05-5251 RBL

PLAINTIFF'S 2nd INTERROGATORY
REQUEST TO DEFENDANT

PLAINTIFF'S INTERROGATORY TO DEFENDANT

The above name Plaintiff, Vladik Bykov, requests that the Defendant, Eacceleration Corporation, in accordance with Federal Rules of Civil Procedure, Rule 33, provide a full and complete answer to Plaintiff, Vladik Bykov, within thirty (30) days of this request to the following interrogatory. This interrogatory is to be answered by the Defendant, Eacceleration Corporation, under oath within the time permitted by law. The requested information must be provided regardless of whether it is possessed by the Defendant personally or by agents, employees, representatives or persons acting on behalf of said Defendant. If you (Defendant) or anyone acting on your behalf should discover any new information or change a position, you are obligated to supplement your answers within the time permitted by law, as required by Rule

PLAINTIFF'S 2nd INTERROGATORY
REQUEST TO DEFENDANT

CASE #: CV05-5251 (RBL)

Vladik Bykov Pro Se
7435 159th PL NE H347
REDMOND, WA 98052
425-869-8379
VLADIK@USA.NET

EXHIBIT

6

1 26(e) of the Fed. Rules of Civ. Proc. If you object to providing any specific detail of
 2 information, state the specific detail objected to and state the objection, but provide all other
 3 information to which you do not object.

4 In answering interrogatory #3, for each and every individual, please use a separate page,
 5 and indicate the individual's name at the top of the page before providing details about that
 6 individual. For each and every individual, indicate whether the company actually has the detailed
 7 information which is being requested in the interrogatory vel non. If you do not have specific
 8 information, as requested in the interrogatory, you must state so in your answer, even if you
 9 object to providing the detailed information in your answer.

10 In answering interrogatory #2, for each and every question on the examination, use a
 11 separate page, and indicate the question at the top of the page before providing details about that
 12 question.

13
 14 2. For each and every question contained in the examination, which Plaintiff was required
 15 to take on May 28th, 2004, identify and explain how that question is related to what the Plaintiff
 16 was doing at Eacceleration, i.e., how the question is related to the positions, job duties, job
 17 assignments and job training that Plaintiff was required to perform or participate in while
 18 employed by Eacceleration.

19 In order to help you understand what kind of information I am looking for in your reply
 20 to this interrogatory, your answer should include the following information: The skill, knowledge
 21 or ability the question is attempting to identify, ascertain or test; How the question is related to
 22 what the Plaintiff would have been doing if he were to have completed training. Provide specific
 23 job functions or duties that are directly related to the question. Also explain how the question is
 24 related to what the Plaintiff actually did after he stopped participating in training. Provide
 25 specific job functions or duties that are related to the question. Lastly, explain the way the
 26 question is related to training.

27 In general, you are to provide information that shows the relationship between the
 28 question and any positions, job duties, job assignments or job training that Plaintiff was required

1 to fulfill, by explaining the need in terms of performance, skill, knowledge or ability and how it
 2 is connected to what the Plaintiff was doing at Eacceleration.

3 An example:

4 Question: What color must the streetlight be in order for you to drive?

5 This kind of question would appear on a written driving exam. One way you would
 6 answer my interrogatory for this question, if it were on the examination taken by Plaintiff is as
 7 follows: "The purpose of this question is to identify if the person has knowledge of the different
 8 types of lights that a street light may indicate. This question is related to driving by the fact that
 9 a driver must be able to differentiate the colors in order to determine when he or she is able to
 10 continue driving his or her car. Without such knowledge, drivers will not know when to stop and
 11 when to drive on at intersections where the probability of collisions increase dramatically,
 12 resulting in crashes. By creating a rule and making sure that drivers are aware that they must
 13 follow this rule at intersections, drivers will know whose turn it is to drive. Thus, knowing the
 14 meaning of each color of a streetlight is important to avoiding accidents and insuring safety to
 15 the people of our city. In order for someone to drive a car, he or she must know the meanings of
 16 different colors that a streetlight may indicate."

17 In the same fashion as I have answered this question about knowledge of streetlights, I
 18 want you, the Defendant, to provide a complete explanation of how each and every question on
 19 the Plaintiff's examination is related to what the Plaintiff was doing while employed at
 20 Eacceleration.

21
 22 3. Identify all employees and interns that have ever worked at Eacceleration Corporation
 23 and all job applicants that were not hired and for each and every individual provide the following
 24 information: (Remember, if you object to providing any information, you must still indicate
 25 whether your records contain the information or not. And, if you object to giving out the name,
 26 you must substitute the person's name with John Doe or Jane Doe, and number them
 27 accordingly, and still provide any information for that individual to which you do not object.)

28 A. Full name, including first and last name, and any middle initial.

1 B. Current or last known address.

2 C. Current or last known telephone #.

3 D. All positions and job titles that were held by the individual. If you object to providing
4 this information, indicate the present location where such information can be found. You must
5 also indicate whether you have such information vel non.

6 E. Results of any test or examination that the individual took before or after being hired
7 by Eacceleration, including the date on which the individual took any test. If you object to
8 providing this information, indicate the present location where such information can be found.
9 You must also indicate whether you have such information vel non.

10 F. The position for which the individual took the test, if any, and the reason, if known,
11 why the individual was required to take the test. If you object to providing this information,
12 indicate the present location where such information can be found. You must also indicate
13 whether you have such information vel non.

14 F. The date on which the individual was hired, and if no longer an employee, the date on
15 which the individual was terminated. If you object to providing this information, indicate the
16 present location where such information can be found. You must also indicate whether you have
17 such information vel non.

18 G. The reason for which the individual was terminated or reason for leaving
19 Eacceleration, if known, in case the individual no longer works for Eacceleration Corporation. If
20 you object to providing this information, indicate the present location where such information
21 can be found. You must also indicate whether you have such information vel non.

22 H. Individual's qualifications that were considered in making a decision to hire the
23 individual. If you object to providing this information, indicate the present location where such
24 information can be found. You must also indicate whether you have such information vel non.

25 I. The individual's performance record. If you object to providing this information,
26 indicate the present location where such information can be found. You must also indicate
27 whether you have such information vel non.
28

1 4. Identify and describe the business necessity and nature of the examination taken by
2 Plaintiff on May 28th, 2004.

3 In order to help you understand what kind of information I am looking for in your reply
4 to this interrogatory, your answer should at least include the following information: Why the
5 examination is given to individuals: The purpose for which the examination is given. The point
6 at which a job applicant or employee is required to take the examination. The reason why the
7 examination is given to the individual. The way the result of the examination is used. The name
8 or title of the person who determines when an examination is to be given. What factors are used
9 in determining who is required to take the examination. Is the examination administered
10 selectively, if so, why?

11 In general terms, Defendant's answer needs to answer the simple question: How and Why
12 does Eacceleration administer an examination? However, you must provide detailed information.
13 Simply stating that the examination is important is insufficient. You must indicate the
14 circumstances in which it is required, whether the company uses the test results in its decisions to
15 promote, demote or terminate employees, and the philosophy behind the examination. What
16 effect does the exam have on a job applicant? And, in order to provide a full answer, the
17 Defendant should indicate what the consequences would be if Defendant did not require its job
18 applicants and employees to take the test.

19
20
21 DATED this 31st day of January, 2006
22

23
24 By: Vladik Bykov
25 VLADIK BYKOV, pro se
26 7435 159th PL NE H347
27 REDMOND, WA 98052
28 425-869-8379
VLADIK@USA.NET

PLAINTIFF'S 2nd INTERROGATORY
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HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VLADIK BYKOV, pro se

Plaintiff,

v.

EACCELERATION CORPORATION, d/b/a
WWW.EACCELERATION.COM; d/b/a
WWW.STOP-SIGN.COM,

Defendants.

Case No. C05-5251 RBL

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

The Defendant, eAcceleration Corporation, by and through its counsel, Bennett Bigelow & Leedom and Marie Westermeier, moved the Court for a Protective Order pursuant to Rule 26(c). The undersigned, having read and considered Defendant's Motion, Plaintiff's Opposition, and Defendant's Reply pleadings, and the declarations and exhibits offered by the parties in support thereof, including the following:

- 1) Declaration of Marie Westermeier and Exhibits 1-12 attached thereto;
- 2) Declaration of Jennifer Engstrom;
- 3) Declaration of David Nason and attachments thereto; and
- 4) Declaration of Clinton Ballard and attachments thereto.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Protective Order [Dkt. #21] is GRANTED. Pursuant to this order:

1. All depositions in this matter shall take place at the offices of Bennett Bigelow & Leedom unless the parties mutually agree to another location that is not at a personal residence;

2. The Plaintiff shall direct all communications to current managers, supervisors, officers and employees of eAcceleration only through counsel for Defendant. Plaintiff shall not attempt to contact directly any managers, officers or supervisors of eAcceleration.

3. Plaintiff shall not attempt to contact directly any employees or eAcceleration while they are at work during business hours, and plaintiff shall not contact any employees at any time, in any manner, who ask not to be contacted by the plaintiff.

4. Plaintiff's Requests for Admission 1-100 are stricken and Defendant is excused from answering the Requests. The Requests for Admission in this matter shall be limited to 25 per side. It is further

ORDERED that Plaintiff's Motion to Strike [Dkt. #27] is **DENIED**.

DATED this 9th day of January, 2006.

Ronald B. Lightner

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

Presented By:

BENNETT BIGELOW & LEEDOM, P.S.

By _____
 Marie Westermeier, WSBA #18623
 Noelle Jackson WSBA # _____
 Attorneys for Defendant